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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 766

THE HUDSON & MANHATTAN RAILROAD COMPANY,

Appellant,

vs.

THE CITY OF JERSEY CITY, FRED M. VINSON, STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT AS TO JURISDICTION.

JAMES B. EMORY,
JOHN E. BUCK,
THOMAS A. HALLERAN,
JOHN F. FINERTY,
Counsel for Appellants.

COLLINS & CORBIN,
Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 3073.

CITY OF JERSEY CITY,

Plaintiff;

and

FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR,

Intervenor,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND HUDSON & MANHATTAN RAILROAD COMPANY,

Defendants.

JURISDICTIONAL STATEMENT BY DEFENDANT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

The defendant, Hudson & Manhattan Railroad Company, respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order and decree in the above-entitled cause sought to be reviewed:

A. Statutory Provisions.

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Sec. 35, 31 Stat. 85; April 30, 1900, c. 339, Sec. 86, 31 Stat. 158; March 3, 1909, c. 269, Sec. 1, 35 Stat. 838; March 3, 1911, c. 231, Secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Sec. 2, 38 Stat. 804; February 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

B. The Statute of a State, or the Statute or Treaty of the United States, the Validity of Which Is Involved.

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. Date of the Judgment or Decree Sought to Be Reviewed and the Date Upon Which the Application for Appeal Was Presented.

The order and decree sought to be reviewed was entered on November 26, 1943. The petition for appeal was presented on December 24, 1943, together with an assignment of errors.

D. Nature of Case and of Rulings Below.

This is an appeal from an order and decree of the District Court of the United States for the District of New Jersey, entered November 26, 1943, granting an interlocutory injunction restraining and enjoining the defendants, United States of America, Interstate Commerce Commission and

Hudson & Manhattan Railroad Company, pending the final hearing in the proceedings entitled above, for a period of fifty days from the date of such order and until a further order of the Court, from putting into effect the report and orders of the Interstate Commerce Commission bearing dates June 8, 1943 and November 2, 1943, in so far as such orders permitted the establishment of any local interstate fare in excess of 8 cents for transportation on the downtown line of defendant, Hudson & Manhattan Railroad Company. The District Court granting such interlocutory injunction was constituted under the provisions of Section 47, Title 28, U. S. C. and consisted of the Honorable Gerald McLaughlin, Circuit Judge, the Honorable Guy L. Fake and the Honorable Thomas F. Meaney, District Judges.

The application for such an interlocutory injunction was based on an amended complaint filed on November 19, 1943, by the City of Jersey City, as plaintiff, purporting to be in accordance with the provisions of Section 41 (28), and Sections 43 to 48, inclusive, of Title 28 U. S. C., and upon a petition for leave to intervene by Fred M. Vinson, Director of the Office of Economic Stabilization by Chester Bowles, Price Administrator of the Office of Price Administration, allowed November 24, 1943.

The reports and orders of the Interstate Commerce Commission against which such interlocutory injunction was granted provided in substance as follows:

The report and order of June 8, 1943 permitted the defendant, Hudson & Manhattan Railroad Company, for the period of the war and six months after the termination thereof to publish and charge as a maximum fare on its downtown line a fare of 9 cents in lieu of the then fare of 8 cents authorized as a maximum reasonable fare by the report, findings and order of the Commission of July 11, 1938, 227 I. C. C. 741.

The report and order of November 2, 1943 modified the report and order of June 8, 1943 to the extent of authorizing the defendant, Hudson & Manhattan Railroad Company, to publish and charge on its downtown line, for the period of the war and for six months after the termination thereof, in lieu of the 9 cent fare authorized by the Commission's report and order of June 8, 1943, alternate fares of eleven tokens for a dollar or a cash fare of a dime, provided said defendant likewise published and charged such alternate fares on its uptown line, in lieu of the fare of 10 cents authorized as a maximum fare on such uptown line by the Commission's report and order of August 9, 1920, 58 I. C. C. 270.

The Commission's report and order of November 2, 1943 were based upon findings after hearing and evidence taken thereon that it was impracticable for the defendant, Hudson & Manhattan Railroad Company, to collect a 9-cent cash fare because of the mechanical limitations of its fare collection boxes, which limitations could not be obviated, and that the only practical means by which said defendant could obtain the revenue which the Commission intended to accord under the 9-cent fare authorized by the Commission's report and order of June 8, 1943, was by means of the alternate tokens and dime fares authorized by the Commission's order of November 2, 1943.

Both the amended complaint and the petition to intervene contained perfunctory allegations that the Commission's orders of June 8, 1943, and November 2, 1943, were without adequate findings or evidence to support them, but the substantive allegations of both were that in making such orders the Commission ignored certain evidence before it and that its conclusions from the evidence before it were erroneous. In addition, both the amended complaint and the petition to intervene alleged in substance that the Commission's order of November 2, 1943, was

made without full hearing by reason of the alleged refusal of the Commission to permit the plaintiff and the intervenor to introduce certain evidence allegedly relevant to the validity of the Commission's orders of June 8, 1943, and November 2, 1943, in permitting any increase in the fare on said defendant's downtown line over the 8-cent fare authorized as a maximum fare by the Commission's order of July 11, 1938. The amended complaint also alleged that:

> "The effectiveness of transportation fares on the downtown line in excess of the reasonable maximum fare of eight cents will create an undue and unjust burden upon the local downtown passenger in violation of the Interstate Commerce Act, and unless the enforcement, operation and execution of the Commission's orders of June 8, 1943, and November 2, 1943, are restrained will cause plaintiff and the members of its body politic great damages as aforesaid for which plaintiff has no adequate remedy at law."

The amended complaint, however, contained no allegation specifying the nature of such damage nor did it contain any allegation that the plaintiff municipality, its officers, agents or employees either had paid or would pay the present 8-cent fare on said defendant's downtown line, or would be subjected to paying the increased fares on that line authorized by the Commission's orders sought to be enjoined. The petition to intervene alleged that:

> "Unless said orders of June 8, 1943, and November 2, 1943, are restrained your petitioners will be caused grave and substantial injury in the performance of their duties under the stabilization legislation."

The intervening petition, however, contained no allegations specifying the nature of such injury nor any allegation that the intervenor, his agents or employees either had paid or would pay the present 8-cent fare on said defendant's downtown line, or would be subjected to paying the increased

fares on that line authorized by the Commission's orders sought to be enjoined.

On hearing of the application for an interlocutory injunction the plaintiff offered no evidence to show that any damage, irreparable or otherwise, could result to the plaintiff from a denial of an interlocutory injunction pending hearing and determination of an application for a permanent injunction, such evidence of alleged damage as the plaintiff did offer being confined to damage which might result from a denial of a permanent injunction. On such hearing the intervenor offered no evidence whatever of damage, irreparable or otherwise.

On such hearing the defendant Hudson & Manhattan Railroad Company introduced evidence by means of an affidavit of Walter F. Brown, Chairman of the Board of Directors and President of such Company, showing (a) that no substantial damage could result to the plaintiff or to the intervenor by the denial of an interlocutory injunction as shown by the facts recited in such affidavit; (b) that irreparable damage of approximately $1,000 per day would result to the defendant Hudson & Manhattan Railroad Company by the granting of an interlocutory injunction during the entire period of such injunction; (c) that the maximum damage which could result to any passenger upon the downtown line of the defendant Railroad Company by a denial of an interlocutory injunction would not exceed 54-5/11 cents per month; (d) that passengers upon the uptown line of said defendant Railroad Company would benefit to the extent of 45-5/11 cents per month should an interlocutory injunction be denied, by reason of the reduction in the existing 10-cent fare on the uptown line authorized by the Commission's order of November 2, 1943; and (e) that he was advised by counsel that the plaintiff could not give a valid bond to protect the Railroad Company from the damage of approximately $1,000 per day which

would result from the granting of an interlocutory injunction in the event a permanent injunction should finally be denied.

The Court, nevertheless, found that irreparable damage would result both to the plaintiff and to the intervenor by the denial of an interlocutory injunction and thereupon granted such an injunction. Moreover, the Court upon granting such interlocutory injunction refused to require the plaintiff to give security for the payment of such costs and damages as might be incurred or suffered by the defendant Hudson & Manhattan Railroad Company should such defendant be found to have been wrongfully enjoined or restrained, although the defendant, Hudson & Manhattan Railroad Company, requested that such security be given as required by Rule 65(c) of the Federal Rules of Civil Procedure.

The defendant Hudson & Manhattan Railroad Company submits that, by reason of the premises and for the further reasons set forth in detail in the assignment of errors filed herein, the Court was guilty of an abuse of discretion and committed errors of law in granting such interlocutory injunction.

E. Cases Sustaining the Supreme Court's Jurisdiction of the Appeal.

Alabama v. *United States*, 279 U. S. 229;
Ohio Oil Company v. *Connelly*, 279 U. S. 813;
New England Divisions Case, 261 U. S. 184;
United States v. *Baltimore & Ohio Railroad Company*, 225 U. S. 306.

F. Decree and Opinion of the District Court.

Appended to this statement is a copy of the opinion of the District Court and a copy of the decree of said Court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated, December 24, 1943.

Respectfully submitted,

COLLINS & CORBIN,
By JAMES B. EMORY,
A Member of the Firm;
JOHN E. BUCK,
THOMAS A. HALLERAN,
JOHN F. FINERTY,
Attorneys for Plaintiff.

APPENDIX "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

Civil No. 3073.

CITY OF JERSEY CITY, *Plaintiff*,

and

FRED M. VINSON, Economic Stabilization Director, by CHESTER BOWLES, Price Administrator, *Intervenor*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and HUDSON & MANHATTAN RAILROAD COMPANY, *Defendants.*

Per Curiam Opinion.

APPEARANCES:

Charles E. Hershenstein, Esq., Charles A. Rooney, Esq., S. S. Eisen, Esq., Attorneys for City of Jersey City.

Edward M. Reidy, Esq., Attorney for Interstate Commerce Commission.

Collins & Corbin, Esqs., by James B. Emery, Esq., John J. Finerty, Esq., Thomas A. Halleran, Esq., John E. Buck, Esq., Attorneys for Hudson & Manhattan Railroad Company.

Harry R. Booth, Esq., Attorney for Office Economic Stabilization, by Chester Bowles, Price Administrator.

McLAUGHLIN, Circuit Judge, and FAKE and MEANEY, District Judges:

It appears upon the face of the record that after hearing and argument a certain order was entered by the Interstate Commerce Commission on June 8, 1943, fixing and establishing certain passenger rates or tariffs on the line of the Hudson & Manhattan Railroad Company between the City of Jersey City and the City of New York, and thereafter, on November 2, 1943, the Commission, for

reasons which appear in the record, increased the said rates or tariffs. It is argued here that both these orders should be enjoined, laying emphasis upon the latter because neither the City of Jersey City nor the Office of Price Administration, which intervened in this proceeding, was afforded an opportunity to cross-examine on the evidence adduced relating to the subject dealt with, and that they were precluded from introducing evidence to meet the issues raised. The Commission's order permits the increase of rates or tariffs to become effective on Monday, November 29, 1943, and we have this day, Friday, November 26, 1943, received briefs and entertained oral arguments covering the issues raised, thus being forced to take action on extremely short notice.

Relating to the rights of the Office of Price Administration, we find the following:

1. It is entitled to intervene herein pursuant to statute. It has done so.

2. It has an interest in that it is charged with the duty of enforcing the stabilization of prices in this critical war period.

3. The consideration of passenger rates is within the sphere of its authority to appear herein, and it has an interest in the rates to the extent that they may affect stabilization.

4. The rights of the Office of Price Administration cannot exhaustively be gone into by this Court in the short space of time between Friday and Monday.

Relating to the rights of Jersey City, it is found:

1. The City of Jersey City is a proper party to these proceedings and has a right to appear and defend, and has acquired a standing as a party before the Interstate Commerce Commission.

2. The City is authorized by law to raise by taxation and spend money so raised to advertise the City as a desirable place in which to locate industries and residences.

The exercise of this right is decreased in value by the increase of rates herein complained of.

It is the opinion of the Court that injunctive relief should be afforded in this cause, staying the operation of the rates and tariffs established as aforesaid and maintaining the status quo ante to the end that a full and complete hearing may be afforded all parties before the said rates and tariffs shall take effect. An interlocutory injunction will therefore be issued, staying the force and effect of the two orders hereinbefore referred to for a period of fifty days hereafter, and the cause is hereby set down for final hearing on the 4th day of January, 1944.

With reference to the necessity of the municipal plaintiff being required to give a bond, as we see it, there is no obligation on the part of such branch of Government to furnish a bond in this proceeding.

APPENDIX "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

Civil No. 3073.

CITY OF JERSEY CITY, *Plaintiff*,

and

FRED M. VINSON, Economic Stabilization Director, by CHESTER BOWLES, Price Administrator, *Intervenor*,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and HUDSON & MANHATTAN RAILROAD COMPANY, *Defendants*.

Interlocutory Injunction and Restraint.

FINDINGS AND ORDER.

This matter coming on to be heard before a statutory court consisting of Honorable Gerald McLaughlin, Judge

of the Circuit Court, and Honorable Guy L. Fake and Honorable Thomas F. Meaney, Judges of the District Court, upon the application of the plaintiffs to enjoin *pendente lite* the orders of the Interstate Commerce Commission bearing dates of June 8, 1943, and November 2, 1943, in the presence of Charles Hershenstein, Charles Rooney and S. S. Eisen appearing for the plaintiff, City of Jersey City, Harry R. Booth appearing for Economic Stabilization Director Vinson and Price Administrator Bowles, intervening plaintiff and John Finnerty and John Buck appearing for the Hudson & Manhattan Railroad Company, and E. M. Reidy appearing for the Interstate Commerce Commission, defendants, and the Court having heard the argument of counsel and considered the briefs, being of the opinion that;

(1) The plaintiffs, City of Jersey City and the Director are proper parties to bring and maintain this proceeding as plaintiffs herein.

(2) That under the Interstate Commerce Act and Acts amendatory thereof, and supplementary thereto, the Interstate Commerce Commission was and is required to afford all parties properly before it a fair and full hearing.

(3) That the City of Jersey City and the Director properly appeared as protesting parties before the said Interstate Commerce Commission and were and are entitled to the aforesaid full and fair hearing.

(4) In addition to the above, the Director, representative of the President, under the Act of October 2, 1942, c. 578, 56 Stat. 765, 50 U. S. C. (App.), intervened in said proceedings with the consent of the railroad company, defendant herein, as required by law, for the purpose of preventing an increase in the fares of said railroad to the extent that such fares would conflict with the stabilization legislation enacted by Congress, to aid in the prosecution of the War, and under said legislation the Director was entitled to a fair and full hearing.

(5) That the pleadings and the argument herein and the record before the Interstate Commerce Commission discloses that neither said City of Jersey City nor said Director, jointly or individually, was afforded a full and fair hearing by the said Commission, in that they were individually and jointly denied the opportunity to present evidence and testimony, including the right to cross-examine witnesses on material matters of a probative nature bearing upon the right of the said railroad to an increase in its fares over and above those in effect on September 15, 1942, under the said Interstate Commerce Act, Acts amendatory thereof and supplementary thereto, and the said Act of October 2, 1942.

(6) That the national interest requires that the fares of the said railroad be maintained as currently in effect, which present fares are the same as those in effect on September 15, 1942, pending final hearing of this cause.

(7) That irreparable damage to the said City of Jersey City and the said Director will result if the reports and orders of the Interstate Commerce Commission dated June 8, 1943, and November 2, 1943, in this proceeding, are not temporarily restrained and enjoined.

Now Therefore, good cause appearing therefor,

It is on this 26 day of November, 1943, Ordered that the defendants, The United States of America, Interstate Commerce Commission and Hudson & Manhattan Railroad Company, be, and they are hereby restrained and enjoined, pending the final hearing in the proceeding entitled above for a period of fifty days from the date of this order, and until the further order of the Court, from putting into effect the report and orders of the Interstate Commerce Commission bearing date June 8, 1943, and November 2, 1943, in so far as such orders permit the establishment of any local interstate fare in excess of 8 cents for transportation on the downtown line of defendant, Hudson & Manhattan Railroad Company.

It is further ordered that final hearing in this cause will be had December 14, 1943, at 10:30 o'clock in the forenoon at the Post Office Building, Newark, N. J.

(S.) GERALD MCLAUGHLIN,
(S.) GUY L. FAKE,
(S.) THOMAS F. MEANEY.